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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Services Licensees)
)
Implementation of Section 257 of the)
Communications Act —)
Elimination of Market Entry Barriers)

WT Docket No. 96-148

GN Docket No. 96-113

To: The Commission

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COMMENTS OF THE AD HOC RURAL TELECOMMUNICATIONS GROUP

The Ad Hoc Rural Telecommunications Group (RTG), by its attorneys, hereby respectfully submits these Comments in response to the Notice of Proposed Rulemaking ("NPRM"), released by the Federal Communications Commission ("FCC" or "Commission") on July 15, 1996, in WT Docket No. 96-148 and GN Docket No. 96-113. These Comments focus on the proposal to extend the ability to partition broadband personal communications services ("PCS") licenses to entities other than rural telephone companies, as presented in the NPRM.

I. STATEMENT OF INTEREST

RTG is a coalition of small telephone companies serving rural America. RTG supports the efforts of all rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and under-served parts of the country. RTG is participating in this rulemaking to ensure that the Commission is apprised of the potentially detrimental effects that would ensue from the

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adoption of the proposal to permit broadband PCS licensees to freely partition their licenses with any willing entity. Adoption of the proposal will decrease rural telephone companies' presence in the broadband PCS market and hinder the delivery of broadband PCS services to rural America. Accordingly, RTG has a significant interest in the outcome of this proceeding.

II. DISCUSSION

A. **The Commission's Partitioning Proposal Contravenes Sections 309(j)(3)(A) and (B) of the Communications Act and Should Be Rejected**

1. **Adoption of the commission's partitioning proposal would hinder the rapid delivery of broadband PCS service to the rural public**

Section 309(j)(3)(A) of the Communications Act of 1934, as amended ("Communications Act"), states that the Commission is charged with promoting "the development and rapid deployment of new technologies, products, and services for the benefit of the public, **including those residing in rural areas**, without administrative or judicial delays."¹ To implement this directive, the Commission adopted a partitioning arrangement which gave rural telephone companies the exclusive right to license geographic segments of PCS licensees' Basic Trading Areas (BTAs) or Major Trading Areas (MTAs) that covered rural telephone companies' telephone service areas.² The Commission established the partitioning scheme based on its recognition that existing infrastructure makes rural telephone companies well-suited to introduce PCS services rapidly into their service areas, which are less profitable to serve for companies without existing infrastructure than more densely

¹ 47 U.S.C. § 309(j)(3)(A) (emphasis added).

² See *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5597-99 (1994) ("*Fifth R&O*").

populated urban areas.³

By proposing to eliminate this exclusive arrangement between rural telephone companies and PCS licensees, the Commission is opening the door for less-qualified entities to undertake the responsibility of ensuring that the rural areas of the country receive quality, innovative PCS services in a timely manner. A small business may be able to strike a better deal with a PCS licensee to acquire a partitioned license, but such an arrangement offers less guarantee to the rural public that delivery of service will be rapid, or even reach them at all. It is a well-recognized fact that rural telephone companies clearly have an advantage in speeding new services to their customers by virtue of their existing wireline infrastructure (e.g., poles, towers, switches, personnel). Any other entity has the burden of creating the necessary infrastructure to reach low-density population areas and persons situated in remote and/or rugged terrain. The creation of such an infrastructure involves the investment of considerable time and money, and a high likelihood of delay before all persons seeking delivery of the service can receive it.

Additionally, the Commission's current partitioning rules obligate rural telephone companies to negotiate for partitioned areas that "include all portions of the wireline service area of the rural telephone company applicant that lies within the PCS service area" and ensure that "the partitioned area [is] reasonably related to the rural telephone company's wireline service area."⁴ Under the new proposal, partitioning would be required to be along county lines for the purpose of reducing the administrative burden on the Commission, but

³ *Fifth R&O*, 9 FCC Rcd at 5597.

⁴ *Id.* at 5598; *see also* 47 C.F.R. §24.714(d).

there is no obligation to provide service to any particular areas.⁵ Entities other than rural telephone companies that must build a PCS system from scratch have no obligation to cover the population served by an incumbent rural telephone provider. Such entities might choose to delay building out a PCS system in that area, or even forego bringing service to the area altogether, should the service area of a rural telephone company be especially difficult to serve. Although PCS licensees are subject to buildout requirements, the Commission's lenient build-out proposals for partitioned licenses actually encourage the avoidance of speeding service to remote or hard-to-reach customers, because the mandatory two-thirds population coverage can be most easily met by serving the largest established communities within the partitioned service area.⁶ Once such a requirement is met, the partitioned licensee need never provide service to more remote and less populated areas.

Rural telephone companies have a very close-knit relationship with the communities they serve. These small businesses depend on their customer bases for survival, and reciprocate by giving back to the community. Telephone company owners and managers reside within their service areas, send their children to local schools, and patronize local businesses. Rural telephone companies have worked hard to deploy fiber to their community schools and develop distance learning and other educational opportunities for their local schools -- a tremendous public service feat that "cream-skimming" entrepreneurs will not be

⁵ *In re Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees — Implementation of Section 257 of the Communications Act — Elimination of Market Entry Barriers, Notice of Proposed Rulemaking*, WT Docket No. 96-148, GN Docket No. 96-113 (released July 15, 1996) ("*Partitioning NPRM*").

⁶ *Partitioning NPRM* at ¶¶33-4.

incented to accomplish. In short, rural telephone companies have a loyalty and obligation to serve their rural communities -- other entities do not.⁷ The Commission needs to understand that alternative providers are unlikely to have any educational or social investment in the service areas they might acquire through partitioning. Thus, the quality of service rural customers have come to expect from their rural telephone companies may be lessened.

Additionally, any current or future negotiations between rural telephone companies and PCS licensees may be halted or protracted so that PCS licensees can “shop” their partitioning agreements to the highest bidder. PCS licensees naturally will be more interested in receiving a premium for their BTA or MTA segments than they will be concerned about the type of service that will be provided once the license is partitioned. The search for the best offer will lead to delay in the ultimate delivery of broadband PCS service to rural areas.

As the foregoing arguments demonstrate, the Commission’s proposed partitioning plan sacrifices the interests of the rural telecommunications consumer for the Commission’s short-sighted attempt to bring more providers into the market. When Congress passed the Telecommunications Act of 1996, it was contemplating that the FCC would strive to strike an appropriate balance between encouraging new technologies and diverse providers and the interests of the public that receive the services. With this proposal, the Commission tips the scales in favor of business and away from the public interest. The Commission may believe that it is fostering a diversity of voices in the telecommunications industry, but at what cost?

⁷ In its NPRM, the Commission expresses concern that allowing rural telephone companies the exclusive right to partition will deny service to rural residents where the rural telephone company declines to exercise its right to partition. In such instances, a non-rural telephone company interested in partitioning need only request a waiver from the Commission which should be routinely granted.

While the Commission's desire to generate auction revenues is certainly understandable, the Commission is losing sight of the most important aspect of its statutory mandate -- protection and advancement of the interests of the telecommunications consumer.

2. Eliminating rural telephone companies' exclusive right to receive partitioned MTA and BTA licenses significantly diminishes the only remaining benefit rural telephone companies receive

Section 309(j)(3)(B) of the Communications Act calls for the Commission to promote economic opportunities for a variety of telecommunications providers, including rural telephone companies.⁸ Of the types of entities named — small businesses, rural telephone companies, and minority- and female-owned businesses — rural telephone companies receive the least amount of assistance from the Commission with regard to the acquisition of licenses. Rural telephone companies are woefully mischaracterized as being financially superior to these other entities, and as a result are excluded from the various assistance schemes devised to enable undercapitalized companies to compete with larger, deep-pocketed companies.

In the rulemaking that adopted the current partitioning rules, rural telephone companies only received a right to partition a license amongst rural telephone company consortium members, or negotiate privately with auction winners to partition their licenses. The Commission excluded rural telephone companies from the bidding credits, tax certificates, and installment payment plans offered to small businesses, women and minorities, unless they fortuitously met the eligibility criteria for one of these designated entity

⁸ 47 U.S.C. § 309(j)(3)(B).

categories.⁹ This same exclusion from designated entity preferences occurred in the 900 MHz Specialized Mobile Radio (SMR) auction, as well.¹⁰

The Commission has repeatedly stated that it believes restricting rural telephone companies to a single partitioning preference is sufficient to fulfill its own mandate under Section 309(j)(3)(B) of the Communications Act to ensure that rural telephone companies are afforded economic opportunities to participate in the provision of new and innovative services. Eliminating the exclusive right of telephone companies to negotiate for partitioned licenses revokes the one designated entity preference rural telephone companies enjoy, and adds yet another preference to the list of designated entity preferences offered to small businesses. Rural telephone companies were effectively shut out of the A, B and C block PCS auctions, due to the exorbitant prices being paid for licenses. Despite any patent attempts on the part of the Commission to design its auction rules to prevent the bank-rolling of designated entities by larger, non-designated entity interests, the amounts ultimately paid

⁹ *Fifth R&O* at 5599 (“We do not think that any other measures are necessary in order to satisfy the statute’s directive that we ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services, and to satisfy our goals to ensure that PCS is provided to all areas of the country including rural areas.”).

¹⁰ *In re* Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool; Implementation of Section 309(j) of the Communications Act — Competitive Bidding; Implementation of Sections 3(n) and 322 of the Communications Act, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2639 (1995) (“We reject SCCC’s argument that we should use a small business threshold that is designed to include most rural telephone companies. By virtue of their existing infrastructure, rural telephone companies already have an edge over other new entrants. Therefore, we are not convinced that their ineligibility for bidding credits, installment payments, and reduced down payments will hinder their entry into 900 MHz SMR services.”).

for PCS licenses betray the truth. Designated entities other than rural telephone companies not only have an edge over rural telephone companies in their ability to employ preferences such as bidding credits and installment payment plans, they tend to have more capital. Rural telephone companies, by their nature, must pour most of their revenue back into their infrastructure in order to adequately serve customers in difficult locations. It is impossible for rural telephone companies to bid head-to-head with another entity whose auction kitty is provided to it by non-controlling interests.

The deadline for filing an application to participate in the auction for the last remaining PCS spectrum -- the 10 MHz D, E and F block "splinters" -- was July 29, 1996, a mere 14 days after release of the NPRM. Relying on their exclusive right to partition, many rural telephone companies, including members of RTG, decided not to participate in the D, E and F block auction. The timing of the issuance of the NPRM is thus particularly harmful to rural telephone companies. For those companies who would now be interested in bidding on the remaining PCS licenses based on the potential elimination of their exclusive partitioning right, the 14 day's notice was insufficient to obtain financing and perform all of the business planning prerequisite to participate in the Commission's complex auction process.

Accordingly, elimination of the exclusive partitioning right for rural telephone companies will have effectively eliminated *any* opportunity for such entities to obtain PCS spectrum.

Due to the inability to obtain PCS licenses at auction, the only way that rural telephone companies may provide their rural customers with PCS service is through partitioning. If the partitioning proposal under consideration is adopted, then the Commission will have, in effect, eliminated all preferences afforded rural telephone companies and

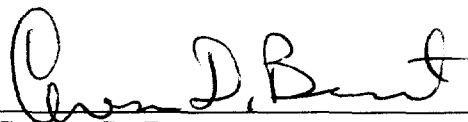
bankrupted their opportunity, and right, to provide PCS service. In so doing, the Commission will fall short of its obligations under Section 309(j)(3)(B) of the Communications Act.

II. CONCLUSION

The Commission's partitioning proposal jeopardizes the ability of rural America to receive high-quality, innovative broadband PCS services in a timely fashion. It also snaps the very thin string with which the Commission is tied to its obligations under the Communications Act to ensure that rural telephone companies receive sufficient opportunities to participate in the provision of new and advanced telecommunications services. This proposal benefits very few, and disadvantages many. Thus, RTG respectfully requests that the Commission weigh the limited merits of the proposed partitioning plan and consequently reject it.

Respectfully submitted,

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Date: August 15, 1996